

## **LBNL – PROCUREMENT STANDARD PRACTICES**

**Section: 15 Subcontracting By Negotiation**

**Subject: 15.5 Cost or Pricing Data**

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**PURPOSE:** This standard practice (SP) outlines the requirements for submission and certification of cost or pricing data as set forth in Public Law (PL) 87-653.

**POLICY:** Certified cost or pricing data shall be obtained from offerors only when necessary to establish the reasonableness of offered prices consistent with FAR Subpart 15.4. Every means available should be used to determine a fair and reasonable price prior to requesting cost or pricing data.

**SCOPE:** This SP applies to:

- Subcontracts expected to exceed \$550,000;
- Modifications of subcontracts (whether or not cost or pricing data were initially required) when the price adjustment (considering both increases and decreases) is expected to exceed \$550,000. (This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification); and
- Award of a subcontract at any tier, if the subcontractor and each higher-tier subcontractor have been required to furnish cost or pricing data and if the price of such subcontract is expected to exceed \$550,000.

See SP 15.6, *Cost or Price Analysis*, for guidance regarding use of information other than cost or pricing data in evaluating price reasonableness or cost realism.

### **DEFINITIONS:**

#### **Cost or Pricing Data**

Cost or pricing data consist of all the facts on price, existing at the time of agreement or other mutually acceptable date, that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. This definition does not limit cost or pricing data to mere cost accounting information. Although the data do not indicate the accuracy of the prospective subcontractor's judgment about estimated future costs or projections, the data do include the facts forming the basis for that judgment. Cost or pricing data are certified.

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Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as (a) vendor quotations; (b) nonrecurring costs; (c) information on changes in production methods and in production or purchasing volume; (d) data supporting projections of business prospects and objectives and related operations costs; (e) unit-cost trends such as those associated with labor efficiency; (f) make-or-buy decisions; (g) estimated resources to attain business goals; and (h) information on management decisions that could have a significant bearing on cost.

### **Certification**

Certification refers to the offeror certifying that, to the best of the their knowledge and belief, the cost or pricing data submitted are accurate, complete, and current as of the date agreed upon between the parties that is as close as practicable to the date of agreement on price.

### **PROCEDURES:**

#### **Determination to Obtain Cost or Pricing Data**

Procurement Specialists shall not require the submission of cost or pricing data unnecessarily, since it leads to increased proposal preparation costs, generally extends acquisition lead times, and consumes additional Laboratory resources.

#### **Subcontractor Pricing Proposal Cover Sheet**

After determining that cost or pricing data must be obtained, accurate, complete, and current cost or pricing data must be requested from the offeror in accordance with the instructions set forth in Table 15.2 of FAR 15.408.

The procurement specialist may either; a) provide a form with the solicitation for the offeror's use in submitting the cost or pricing data, b) permit the offeror to utilize their own form, or c) request the offeror submit the cost or pricing data on *Subcontractor Pricing Proposal Cover Sheet*, Standard Form 1411 (SF-1411).

If cost or pricing data are requested and submitted by an offeror but an exemption is found later to apply, the data must not be considered to be cost or pricing data (i.e., a certificate of current cost and pricing data will not be required at the conclusion of any negotiation).

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**Complete Data** — The subcontractor must submit the proposed cost elements and supporting information and schedules as part of their cost and pricing data. Submitting data without the supporting schedules is unacceptable and essentially has the same effect as submitting no data at all.

### **Exemption to Cost or Pricing Data Requirement**

Cost or pricing data shall be obtained only if the procurement specialist determines that none of the exceptions or other reasons stated below apply:

- The prices agreed upon are based on adequate price competition;

Note: This exemption applies to cost-reimbursement subcontracts as well as fixed price. When evaluating a cost reimbursement subcontract proposal, the cost proposal should not control the evaluation because it is an advance estimate of cost that might not be a valid indicator of actual cost to be incurred. If adequate price competition is received on a proposed cost-reimbursement subcontract, information other than cost or pricing data may be used in determining cost realism. See SP 15.6, Cost or Price Analysis.

- A commercial item is being acquired or a subcontract is modified to acquire commercial items.
- The prices agreed upon are based on prices set by law or regulation; or
- A waiver has been granted.

### **Other Reasons**

- The exercise of an option at a price established through the initial negotiations or by the subcontract award; or
- Proposals used solely for overrun funding or interim billing adjustments.

### **Standards for Exemptions:**

#### **Adequate Price Competition**

A proposed price is deemed to be based on adequate price competition in the following three instances:

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- Where two or more responsible offerors, competing independently, submit priced offers responsive to the Laboratory's expressed requirement and award is made to an offeror whose proposal offers either: (a) the greatest value to the Laboratory and price is a substantial factor in source selection; or (b) the lowest evaluated price. In this instance, there must be no finding that the price of the otherwise successful offeror is unreasonable;
- Where there was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers responsive to the solicitation's expressed requirement, even though only one offer is received, provided that the procurement specialist can reasonably conclude that the offer received was submitted with the expectation of competition;
- Where price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition.

Commercial Items  
and Commercial  
Services

See SP 2.1 for definition of Commercial Item and Commercial Services.

Prices Set by Law  
or Regulation

Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body or embodied in the law are sufficient to set a price.

Waiver of Cost or  
Pricing Data

The DOE Contracting Officer may waive the requirement for submission of cost or pricing data in exceptional cases. The DOE Contracting Officer will consider waiving the requirement if the price can be determined to be fair and reasonable without submission of cost or pricing data. The request for the waiver, the supporting rationale, and the authorization shall be in writing. The cost/price analysts can assist in preparing the request for waiver.

**Claim for  
Exemption**

A subcontractor may claim exemption from submission of cost or pricing data based on one of the above. The procurement specialist should obtain sufficient information to evaluate and substantiate the claim.

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### Defective Data

If, before agreement on price, any cost or pricing data submitted by the offeror are found to be inaccurate, incomplete, or not current, the offeror must be notified and a price that reflects the new data must be negotiated.

If, after award, cost or pricing data are found or suspected to be inaccurate, incomplete, or not current as of the date of final agreement on price, the subcontractor must be notified; the cost or pricing data evaluated, by audit or cost/price analyst review; and a price adjustment, including profit or fee, must be negotiated on any significant amount for which the price was increased by the defective data.

### Certificate of Current Cost or Pricing Data

Whenever cost or pricing data are required, include two copies of the *Certificate of Current Cost or Pricing Data* in the solicitation. At the conclusion of negotiations, an officer or other responsible person in the offeror's organization must complete and sign the form as of the date of final agreement on price or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price. One copy of the *Certificate* must be retained in the subcontract file and the second copy retained by the offeror.

Note: The subcontract file must specify to what extent the *Certificate* data was relied upon or used to negotiate or determine price reasonableness.

### Altered Form

If an offeror wishes to alter the *Certificate*, to insert contingent words or phrases, or to otherwise change its meaning, advice should be sought from Laboratory Counsel.

### CLAUSES:

Include the following clauses in solicitations and subcontracts when it is contemplated that cost or pricing data will be required from any subcontractor

- FAR 52.215-10, *Price Reduction for Defective Cost or Pricing Data*
- FAR 52.215-12, *Subcontractor Cost or Pricing Data*.

Include the following clauses in solicitations and subcontracts when it is contemplated that cost or pricing data will be required from any subcontractor or lower-tier subcontractor for pricing modifications and the above clauses were not included:

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- FAR 52.215-11, *Price Reduction for Defective Cost or Pricing Data — Modifications*
- FAR 52.215-13, *Subcontractor Cost or Pricing Data — Modifications*

The following clauses may be included in solicitations, where appropriate:

- FAR 52.215-20, *Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data*
- FAR 52.215-21, *Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data - Modifications*

### **RESPONSIBILITIES:**

#### **Procurement Specialist**

The procurement specialist must:

- Determine the information needed for evaluating the reasonableness of price;
- Use every means available to determine if a fair and reasonable price can be determined before requesting cost or pricing data from offerors;
- Ensure that offerors submit accurate, complete, and current cost or pricing data (Offeror may, but is not required to use on the SF-1411, *Contractor Pricing Proposal Cover Sheet*);
- Negotiate a fair and reasonable price based upon the cost or pricing data and any other information available;
- Ensure that an analysis of the offeror's cost or pricing data is performed;
- Obtain and review the *Certificate of Current Cost or Pricing Data* for accuracy;
- Consider the effect of any identified defective pricing on the subcontract price; and
- Include the appropriate clauses in the solicitation and subcontract.

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### **REVIEW/APPROVAL:**

**DOE**

DOE must review and approve all requests for waiver of the requirement for certified cost or pricing data.

### **REFERENCES:**

Prime Contract Clause I.13 – Subcontractor Cost or Pricing Data

Prime Contract Clause I.14 – Subcontractor Cost of Pricing Data  
- Modifications

Prime Contract Clause I.114 – Contractor Purchasing System